

LEGISLATIVE UPDATE

COVERING CRIMINAL JUSTICE LEGISLATIVE ISSUES

WINTER 2005, No. 21

DEPARTMENT OF PUBLIC ADVOCACY

PUBLIC ADVOCACY COMMISSION: JUSTICE IS BEING JEOPARDIZED BY HIGH PUBLIC DEFENDER CASELOADS: PUBLIC MEETINGS BEGIN, MORE PLANNED

The Commission Receives the Caseload Report

Ernie Lewis, Public Advocate

The Public Advocacy Commission received the Department of Public Advocacy's Annual Defender Caseload Report for FY04 at its October meeting. The Public Advocacy Commission is a 12-member oversight body chaired by Robert Ewald of Louisville. The Commission consists of 7 appointments by the Governor, 2 appointments by the Court of Justice, and 3 appointments by the Deans of the three Kentucky law schools. They are responsible for general oversight of the public advocacy system.

The Commission received the report with deep concern. The Annual Defender Caseload Report is the primary tool for tracking and communicating data regarding Kentucky's statewide Public Defender Program. The report revealed the following:

- Overall cases rose to 131,094, up from 117,132 the previous year.
- Case numbers at the trial level increased by 12% during FY04.
- Case numbers have been steadily rising over the past four years. In FY2000, DPA had 97,818 cases. In FY 01, DPA had 101,847 cases. This increased to 108,078 in FY02, and again to 117,132 in FY03.
- Public defenders began FY04 with an average caseload of 484. DPA used additional revenue during FY04 to hire 10 new caseload reduction lawyers and placed them in offices with the heaviest caseloads.
- Nevertheless, public defenders ended FY04 averaging 489 new cases annually. Despite the hiring of the new caseload reduction lawyers in FY04, the average caseload has risen by 1.1%. **DPA's average caseload for its trial attorneys is 185% of the recognized National Advisory Commission's national standards.**
- One office, Hazard, averaged in excess of 600 new cases per lawyer in FY04.

- Fifteen offices had average caseloads in excess of 500 new cases per lawyer. Those offices are:

- ◆ Henderson—569
- ◆ Paintsville—538
- ◆ Bullitt—536
- ◆ Maysville—543
- ◆ Louisville—531
- ◆ Morehead—527
- ◆ Somerset—527
- ◆ Owensboro—522
- ◆ Boone—504
- ◆ Elizabethtown—519
- ◆ Columbia—513
- ◆ Hopkinsville—509
- ◆ Stanton—505
- ◆ Murray—599
- ◆ Frankfort—503



Ernie Lewis, Public Advocate

After receiving the report, the Public Advocacy Commission decided to hold a series of regional public meetings in order to learn more about the problem. The purpose of the meetings is to provide an opportunity for Commission members to hear from members of the criminal justice community, particularly public defenders, regarding the effect of excessive caseloads on the criminal justice system. The first pub-

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lic meeting was held in December in Somerset. A second meeting will be held in northern Kentucky during the month of February.

Caseloads Have Ethical Implications

DPA's caseload report was presented to the Commission within the context of several national standards. American Bar Association's *Standards Relating to the Administrative of Criminal Justice*, Standard 4-1.3(e) states that "[d]efense counsel should not carry a workload that, by reason of its excessive size, interferes with the rendering of quality representation, endangers the client's interest in the speedy disposition of charges, or may lead to the breach of professional obligations."

ABA *Standards Relating to the Administrative of Criminal Justice*, Standard 5-5.3 states that "(a) Neither defender organizations, assigned counsel nor contractors for services should accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation or lead to the breach of professional obligations. Special consideration should be given to the workload created by representation in capital cases."

ABA *Standards Relating to the Administrative of Criminal Justice*, Standard 5-5.3(b): "Whenever defender organizations...determine, in the exercise of their best professional judgement, that the acceptance of additional cases...will lead to the furnishing of representation lacking in quality or the breach of professional obligations, the defender organization, individual defender, assigned counsel or contractor for services take such steps as may be appropriate to reduce their pending or projected caseloads, including the refusal of further appointments. Courts should not require individuals or programs to accept caseloads that will lead to the furnishing of representation lacking in quality or to the breach of professional obligations."

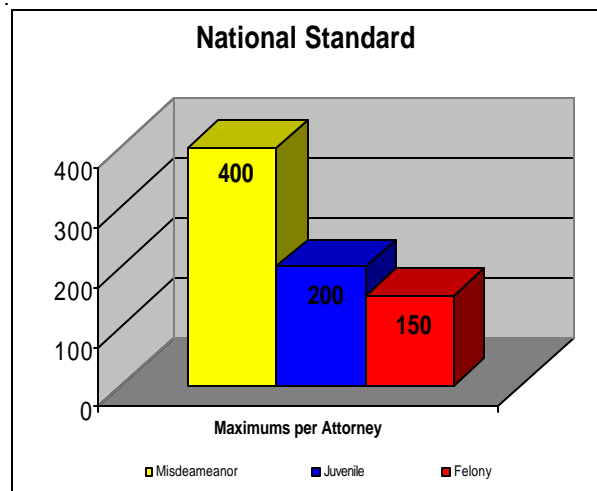
Finally, American Council of Chief Defenders Ethics Opinion 03-01 (April 2003) states that "[a] chief executive of an agency providing public defense services is ethically prohibited from accepting a number of cases which exceeds the capacity of the agency's attorneys to provide competent, quality representation in every case...When confronted with a prospective overloading of cases or reductions in funding or staffing which will cause the agency's attorneys to exceed such capacity, the chief executive of a public defense agency is ethically required to refuse appointment to any and all such excess cases."

National Caseload Standard

In the above standards, there is an acceptance of the fact that there is a caseload level beyond which it is unacceptably high. Certainly, circumstances in different jurisdictions can vary. Travel, prosecutorial practices, sentencing prac-

tices, and other circumstances can have a significant effect on how many cases a public defender can handle within the bounds of ethics.

At the same time, there is a nationally recognized numerical standard for the *maximum* number of cases that a trial level public defender should carry. The benchmark has been set in the National Advisory Commission Standards (1973), and has been followed by public defender agencies nationwide since that time. The black letter standard reads as follows: "The caseload of a public defender attorney should not exceed the following: felonies per attorney per year: not more than 150; misdemeanors (excluding traffic) per attorney per year: not more than 400; juvenile court cases per attorney per year: not more than 200; Mental Health Act cases per attorney per year: not more than 200; and appeals per attorney per year: not more than 25." This is demonstrated in the chart below.



What is a "case?"

The Department of Public Advocacy has defined a case in the same way for over a decade. It is a definition that features a conservative approach to case counting. It reads as follows: "A case consists of a single accused, having either under the same or different case number(s), one or more charges, allegations, or proceedings arising out of one event or a group of related contemporaneous events. These charges must be brought contemporaneously against the defendant, stemming from the same course of conduct, and involving proof of the same facts."

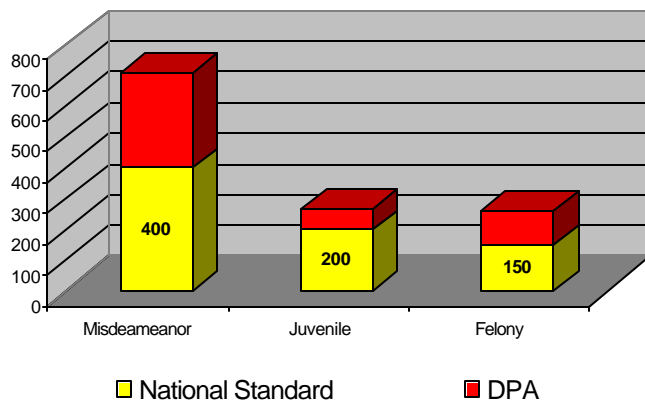
I have in my life always been reluctant to hit the 'panic button,' but we are on the verge of a meltdown in our office in caseloads in Perry District Court....

— Peyton Reynolds, Hazard Public Defender

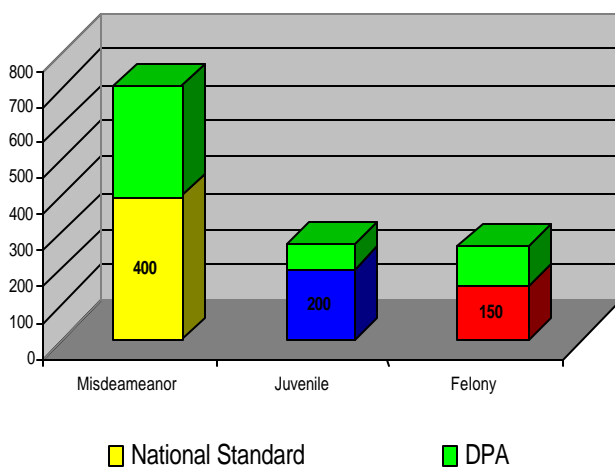
Kentucky Mixed Caseloads in FY04 Exceed the National Standards

Based upon the above national standards, trial attorneys in the Department of Public Advocacy far exceeded those standards in FY04. Virtually all of Kentucky public defenders carry a “mixed caseload” of juvenile, misdemeanor, and felony cases due to the fact that they are often the only defender in a particular county. The below chart demonstrates the extent to which the average Kentucky trial level public defender’s caseloads exceed national standards.

**Percentage of DPA Cases Above
National Standard**



**Percentage of DPA Cases Above
National Standard**



DPA’s Caseloads are 185% of Nationally Recognized Standards

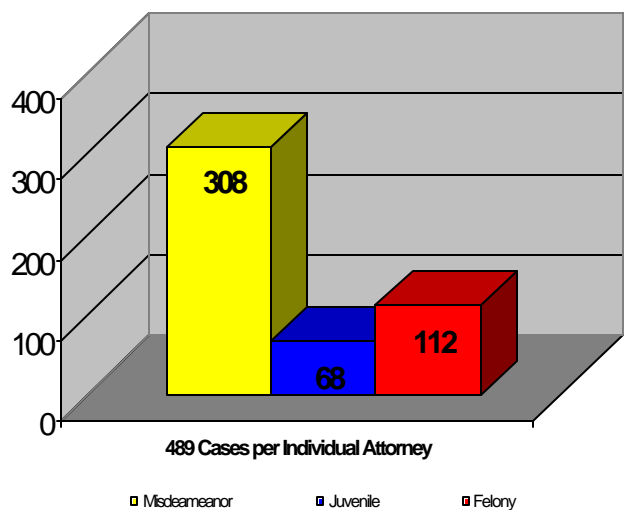
Based upon the above national standards, at 489 cases per lawyer, DPA caseloads are at 185% of national standards. This is because DPA’s trial defenders have 23% of their caseload in circuit court, 62% in district court with misdemeanors, 13% in juvenile court, and 2% involuntary commitments. The below charts demonstrate the extent to which Kentucky’s trial defenders’ mixed caseloads exceed national standards.

Defenders Have No Control Over Their Caseloads

One might say that the problem of an excessive caseload is that judges are simply appointing too many public defenders. In Kentucky the eligibility decision is not made by the local public defender’s office. Rather, the judge before whom a defendant appears is responsible for determining indigency and appointing the public defender’s office. There is no apparatus for Kentucky’s public defenders to challenge excessive appointments. In fact, if an appointment turns out to have been incorrect, the more appropriate mechanism for redress is the imposition of a partial fee and a lawsuit for recovery. KRS 31.211.

The Kentucky Supreme Court criminal rules of procedure establish the judge as the appointing authority for indigents accused of crime. RCr 3.05(2) reads as follows: “If the crime of which the defendant is charged is punishable by confinement and the defendant is financially unable to employ counsel, the judge shall appoint counsel

Total Cases Per DPA Attorney



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to represent the defendant unless he or she elects to proceed without counsel.”

Likewise, KRS 31.120(2) reads as follows: “The determination of whether a person covered by KRS 31.110 is a needy person shall be deferred no later than his first appearance in court...Thereafter, the court concerned shall determine, with respect to each step in the proceedings, whether he is a needy person.”

It has been my experience that most judges make appropriate appointing decisions based upon the factors listed in KRS 31.120. There are a minority of judges who appoint counsel for too many people who are not eligible; likewise there are a minority of judges who do not appoint counsel for people who are clearly eligible for public defender services.

The *Blue Ribbon Group* Report of 1999 Recommendation #11 read as follows: “Public Defender Services are Constitutionally Mandated while Resources are Scarce. It is Important for all Eligible Persons who want to be Represented by a Lawyer, but only those who are Eligible to be Appointed a Public Defender. The Court of Justice, and Especially AOC and DPA are Encouraged to Work Cooperatively to Ensure Appropriate Public Defender Appointments.”

Excessive Caseloads are a Chronic Problem

Experience has shown that earlier warnings were valid. A review of recent reports demonstrate that Kentucky has yet to fund its public defender system adequately in order to bring down caseloads to a reasonable level. In 1997, Bob Spangenberg on behalf of the American Bar Association Bar Information Program stated the following: “Overshadowing all of the problems facing and the solutions proposed by DPA is that of burgeoning caseloads. Over the past decade DPA’s caseloads have increased dramatically, while funding has failed to keep pace.”

In the *Blue Ribbon Group* Report of 1999, the following finding was made: “Finding #5: The Department of Public Advocacy per attorney caseload far exceeds national caseload standards.”

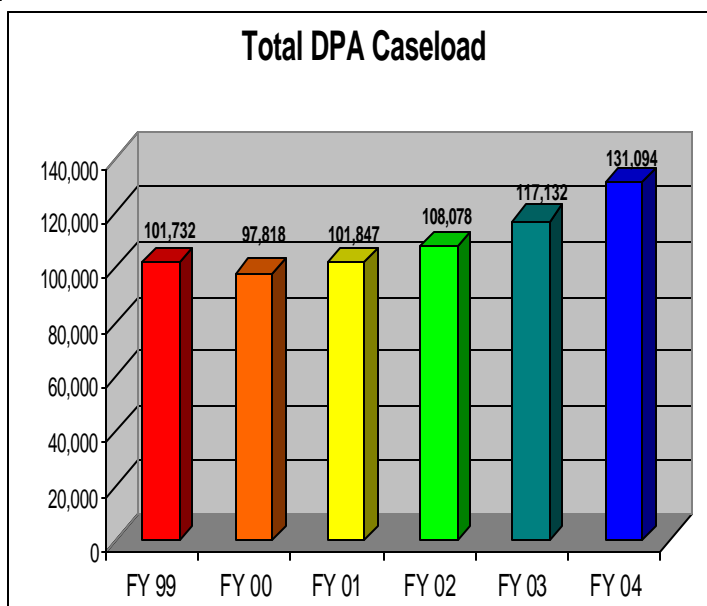
In that same report, in Recommendation #6, the *Blue Ribbon Group* recommended that: “Full-time trial staff should be increased to bring caseloads per attorney closer to the national standards. The figure should be no more than 350 in rural areas and 450 in urban areas.”

In 2001, the *Blue Ribbon Group* met again and reviewed the progress made by the 2000 General Assembly. They issued this resolution: “...the BRG urges immediate action to fully fund the Public Advocacy system in order to achieve this constitutionally mandated basic service for the people of the Commonwealth of Kentucky.”

In September 2002, the ABA Juvenile Justice Center, National Juvenile Defender Center, and the Children’s Law Center, Inc., in a report entitled *Advancing Justice: An Assessment of access to counsel and quality of representation in delinquency proceedings*, stated as follows: “The Kentucky Department of Public Advocacy and local public defender offices should ensure that...caseloads are reduced in all areas of the Commonwealth where they currently exceed the IJA/ABA Juvenile Justice Standards....”

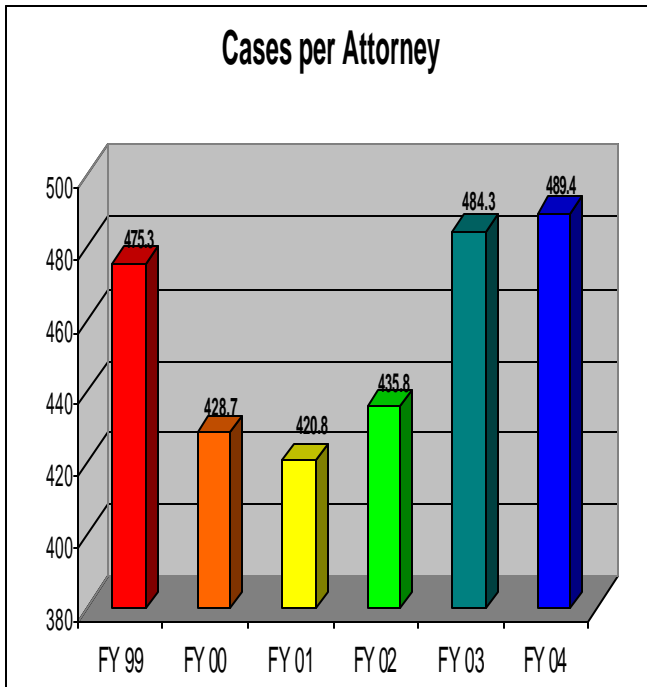
Caseloads Have Gone Up Each Year Since 2000

Since the *Blue Ribbon Group* met, much progress has been made. Specifically, the full-time public defender system has almost been completed, with only Barren and Metcalfe Counties remaining covered by private lawyers on contract. \$6 million of the original \$11.7 million called for by the *Blue Ribbon Group* was placed into the Department’s General Fund. However, since that time, caseloads have continued to go up. The below chart demonstrates graphically how caseloads have been growing during the last 5 years.



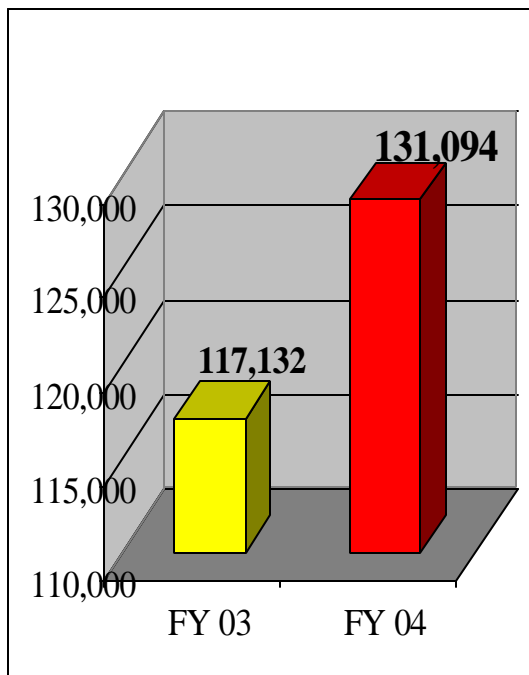
Cases Per Attorney Have Gone Up Each Year Since 2001

Another way to look at what has been happening with individual defender caseloads is to examine the average attorney’s caseload. As one can see in the chart below, caseloads per attorney dropped significantly after the budget increase of 2000. However, since that time, caseloads per attorney have increased above what they were in 1999 at the time of the *Blue Ribbon Group* report.



Caseloads Increased 12% from FY03 to FY04

The pattern of increasing caseloads sped up in FY04. At that time, caseloads increased by 12%. As a result, money that had been allotted for caseload reduction operated only to mitigate the increase somewhat.



**A Defender has Have Only
3.8 Hours to Spend on Each Case**

There is a very real and dramatic effect of high caseloads. The average defender has 1875 hours to spend in a year. That is 7.5 hours times 50 weeks. Leaving no time for the many other things a lawyer does in a year, 1875 hours divided by 489 cases leaves only 3.8 hours per case. That means that, in every case throughout the year, the defender has less than 4 hours to spend on the case whether it is a misdemeanor or a murder case. During those 3.8 hours, the defender at a minimum must find time to do the following:

- Interview the defendant at least once
- Review the charging documents
- Go to court at least once
- Investigate the case
- File motions
- Resolve the case through plea negotiations or a trial
- Participate in sentencing

One can readily see that as caseloads have risen, Kentucky public defenders have significantly less capacity to act in the capacity of defender as contemplated in *Gideon v. Wainwright* (the United States Supreme Court's mandate that poor people have the assistance of legal counsel). The impact on quality of representation and reliability and fairness of verdicts cannot be denied.

**Kentucky Funding for Indigent Defense
Results in a Low-Funding-Per-Case**

Another way to look at the caseload issue is to determine how much Kentucky allots for indigent defense. The higher the caseload, the lower the cost-per-case will be. At the time of the *Blue Ribbon Group* Report, Kentucky was funding its public defender system at near the bottom of the country. Recommendation #2 of the Report read as follows: "The Kentucky public defender system cannot play its necessary role for courts, clients, and the public in this criminal justice system without significant increase in funding."

In the commentary, the Report stated that "[w]ithout proper funding, public defenders and court-appointed counsel must face ever-burgeoning caseloads without adequate support services. As such, we recommend that the Department of Public Advocacy receive a significant increase in funding to bring Kentucky into the median range of comparable states in regards to indigent defense cost-per-case and cost-per-capita.

Kentucky ranked last in cost-per-case out of the twelve states for which we obtained FY 1998 information. Once again, Kentucky ranked sixth in total cases and eleventh in total expenditure. If the DPA were to receive an \$11.7 million increase (up to \$30,723 million), Kentucky would move to number seven of the list of comparable states in regard to indi-

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gent defense expenditure (See Table 5.1). Such an increase would raise the state's cost-per-case figure to \$303.56. This new cost-per-case figure would only move Kentucky to ninth on the list."

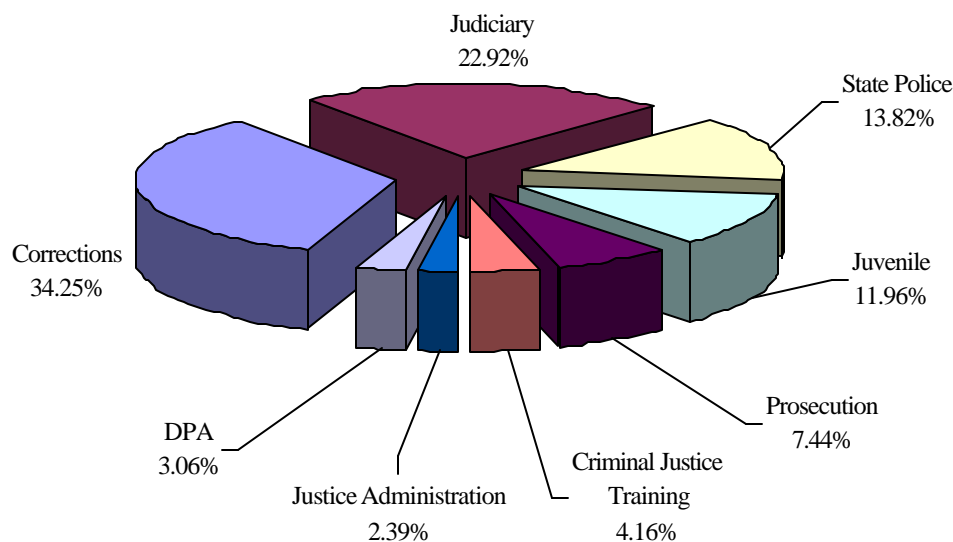
Today, little progress has been made compared to other states. While significant progress has been made in overall funding, Kentucky's funding per case has remained low, and Kentucky's place in relation to other states has also remained low. In the most recent comparisons conducted by a national consulting group, Kentucky continues to be at the bottom of the nation in funding-per-case.

- Colorado: \$889
- Ohio: \$719
- Alabama: \$603
- Iowa: \$570
- West Virginia: \$513
- Massachusetts: \$468
- North Carolina: \$435
- Missouri: \$384
- Georgia: \$310
- Maryland: \$306
- Virginia: \$250
- Kentucky: \$228 (FY04 figures)

(All figures 2002 except Kentucky)

Kentucky's Investment in Indigent Defense Compared to the Rest of the State's Criminal Justice System

How much does Kentucky invest in indigent defense compared to the rest of the criminal justice system? The below chart demonstrates these expenditures on a percentage basis.



We don't shortchange the client...What we shortchange is ourselves....So many things in this life are determined by how much money you have. Whether you lose your life - or a good portion of it - should not be one of those things.

-- Harolyn Howard, Pikeville Public Defender

Department of Public Advocacy's Highest Budget Priorities for FY05-06

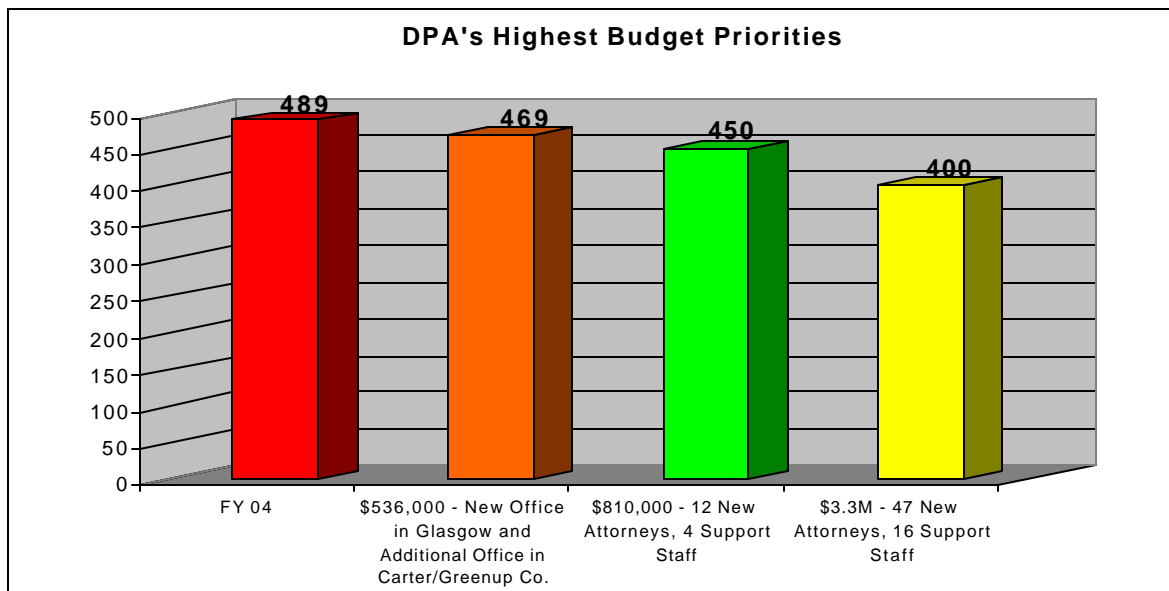
Kentucky's budget situation has been dire for the past few years. This has had an enormous impact on the criminal justice system, and particularly indigent defense. DPA cannot continue to operate at 185% of national workload standards. Kentucky public defenders cannot continue to spend but 3.8 hours per case. Kentucky public defenders cannot continue to absorb a 12% increase in caseloads.

The Department of Public Advocacy needs an immediate and significant increase in the budget in order to reduce caseloads. The Department's priorities for how this increase would be spent is demonstrated in the chart below. Essentially, the Department will complete the full-time system and make it more efficient by opening an office in Glasgow that will cover Barren, Metcalfe, and Monroe Counties (Monroe is presently covered by the Columbia Office.) In addition, the Morehead Office will be split into two, with a new office

opening in either Carter or Greenup Counties. These changes will have the effect of lowering caseloads while at the same time completing the full-time system. It will cost \$536,000. Secondly, for \$810,000, the caseloads of Kentucky public defenders can be lowered to 450 open cases per lawyer per year, assuming no increase in overall caseloads. For an additional \$3.3 million, the Department can lower trial attorney caseloads to 400 new cases per year. ■

The real situation is like a house that is full of termites and the fact that it finally falls down is only the first sign. The termites are already in the house. Things are getting worse. The pressure is building and we don't understand, I think, how bad it would have to be before that house actually fell apart.

— Glenn McClister, Assistant Public Advocate



There can be no equal justice where the kind of trial a man gets depends upon the amount of money he has.

— Justice Hugo Black (1956)

ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM

#5 Defense counsel's workload is controlled to permit the rendering of quality representation. Counsel's workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations, and counsel is obligated to decline appointments above such levels. National caseload standards should in no event be exceeded, but the concept of workload (*i.e.*, caseload adjusted by factors such as case complexity, support services, and an attorney's nonrepresentational duties) is a more accurate measurement.

COMMISSION HEARS DRAMATIC INFORMATION AT PUBLIC MEETING IN SOMERSET

CASELOADS NEARLY TWICE THE NATIONAL AVERAGE ARE TAKING THEIR TOLL

Ernie Lewis, Public Advocate

The Public Advocacy Commission held the first of six planned meetings to explore the caseload crisis in the public defender system in Kentucky. The meeting was held on December 16, 2004 at the Rural Development Center in Somerset. 35 people were in attendance, including members of the Judiciary, including Chief Justice Joe Lambert, Commission members, a large group of public defenders from surrounding offices, as well as members of the Justice and Public Safety Cabinet, a probation and parole officer, members of the media, and members of the community.

The Commission's decision to hold these public meetings came at its quarterly meeting in October. The Commission had received the FY04 Annual Caseload Report which revealed, among other things, that caseloads had gone up by 12% in FY04, that the average trial attorney opened 489 cases in FY04 and that 489 cases was 185% of national standards. Commission members decided they needed to go out into each of the trial regions and hear from public defenders, their families, and other parts of the criminal justice system to determine how better they as a Commission could react to the is a gathering caseload crisis.

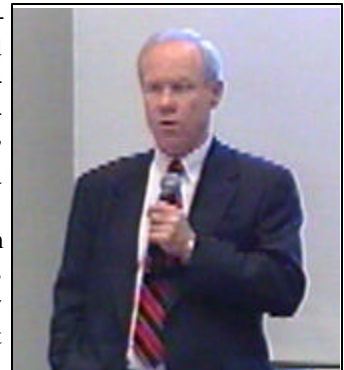
The Chair of the Commission, Bob Ewald, began the fact-finding meeting by noting that public defenders are dedicated to achieving justice for the poor. Jerry Cox of Mt. Vernon, also a Commission member, reflected that public defenders have far too many cases, that they are having to give up time with their family due to excessive overtime, and that the efforts of Operation UNITE have caused further strain on the public defender system. He stated that the Commission "had to address your caseloads. That's why we're here."

I fear the promises of the right to counsel are being lost somewhere in the stack of files on my desk that just keeps growing taller. For now, I will continue to fight to keep my promises every day. But every day I get a little more tired and a little more convinced that I am fighting a losing battle."

-- Jennifer Hall, Public Defender

Chief Justice Joe Lambert

Chief Justice Joe Lambert addressed the meeting. He recalled that he had been on the *Blue Ribbon Group on Improving Indigent Defense in the 21st Century* in 1999, and that there had been a good outcome from that effort. He reflected that the current problem of that public defender caseloads is part of a problem effecting many parts of the system. He stated that county judge executives across the Commonwealth are concerned about the costs of incarceration. He stated that, in Union County alone, 55% of the county budget is devoted to incarceration.



Chief Justice Joe Lambert

The Chief Justice congratulated the Public Advocacy Commission for bringing the problems of excessive caseloads to the public's attention. He also expressed his support in addressing the excessive caseload issue.

Jim Cox

Jim Cox has been a public defender in the Somerset Office for over 2 decades. He said that he is proud to be a public defender, but that it "hurts me emotionally to see my people under stress ... I feel helpless... Their health is deteriorating." He also stated that he worried about the poor clients represented by the Somerset Office.



Jim Cox



Judge Dan Venters

Dan Venters

Dan Venters is a retired circuit judge from Pulaski and Rockcastle Counties. He noted how his criminal docket that was covered at one time by a single judge spending 1/2 day once a month, now requires 2 judges working all day to accomplish the same thing. He stated that what motivates him, as well as the public, to support indigent defense is the fundamental belief in liberty. He said that as a trial judge “I sleep better at night knowing there’s a public defender system.” “The obvious need is a lot more money in the system. This is not charity. This is money spent for our own peace of mind.”

Teresa Whitaker

Teresa Whitaker is an attorney in the Somerset Office, who once directed the office in Columbia. She emphasized that



Teresa Whitaker

just because a client has an attorney standing next to them doesn’t mean that the attorney is prepared to represent the accused. She expressed great frustration, saying “we’re busting our butts and we’re just treading water” as a result of high caseloads. She complained that bonds were being set that were much too high but that she did not have enough sufficient time to appeal the bonds. “People are staying in jail because defenders don’t have enough time to work on their bonds.” “My worst fear is that I’m not going to be able to defend the innocent client because of my caseload.”

Roger Gibbs

Roger Gibbs is the directing attorney for the London Public Defender’s Office, and regional manager for the Eastern Region, approximately the same region covered by Operation UNITE. He stated that, without the growth of drug arrests, particularly for methamphetamine, that there would not be a caseload problem in his office. He said that in Bell County they had moved from 1 rule day a month, to 2 or more each month. He said that in Leslie County court goes from 8:00 a.m. to 7:00 p.m. to deal with the caseload. “We do not have enough bodies—that’s the problem. Every Tuesday, if some-



Roger Gibbs

one is in trial, I don’t have enough attorneys to cover all the courts in my counties.”

Jennifer Hall

Jennifer Hall has been a public defender in the Richmond Office for over a decade. She has seen dramatic growth in her caseload in Clark County, where she has worked since she began. “There are so many clients that I cannot always be the guiding hand through the process that the right to counsel promises....Private counsel, with their one or two clients, can ask for time to speak with their defendants while the rest of the docket goes on. The ‘rest of the docket’ is my docket. The judge cannot wait for me because I represent most all of the defendants on the docket. I am spread much too thin to provide careful guidance to every client. And careful guidance is what the right to counsel promises.”



Jennifer Hall

“I fear that my clients may serve jail time for offenses when private counsel’s clients may get the help they need. Zealously advocating for every possible option to incarceration is what the right to counsel promises. So maybe justice is for sale. If not because a client can buy ‘expertise,’ then maybe because a client can buy something more precious—counsel’s time.

Glenda Edwards

Glenda is the directing attorney of the Columbia Office which covers 9 counties and 2800 square miles. She said that three of her lawyers are on “jagged edge” as a result of their caseloads. “There is a lot of burnout. Attorneys are with the office who have not had a vacation in years. There is huge stress in representing clients not knowing if you had represented them well enough.” Glenda reported that last year she had over 700 cases with most of them being felonies.



Glenda Edwards

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Lynda Campbell



Lynda Campbell

Lynda Campbell is the regional manager for the Bluegrass Region, and the directing attorney for the Richmond Office. She has been a public defender for 24 years. "I have seen the quality of representation decrease as our caseloads increase. This decline in quality of representation is not due to lack of skill, or lack of training. The

decline is due to our crushing caseloads...innocent people may lose their freedom because high caseloads prevent their public defender from preparing their case.

Innocent people may lose their lives because of our high caseloads. All citizens in this Commonwealth lose as well. They lose their faith in our system of justice, and their belief

that justice does not depend on the amount of money a person has. Prosecutors and judges know that the justice system wins every time a person accused of a crime is represented by an attorney who is a zealous advocate.

Only Perry Mason won every case. But even when I lose a case, the justice system wins if an adequate defense is made. The rich can buy an attorney with the time to devote to their case. The poor cannot. Our justice system is in jeopardy."

Future Meetings

Five additional fact-finding meetings are planned during 2005. The attempt will be to hear from every Kentuckian who wants to be heard on this subject. A report will then be prepared by the Commission to be presented to the Governor and the General Assembly. ■

Jim Cox, Somerset Directing Attorney

I've always been proud to be a public defender. I have been a public defender since 1981...

Being a directing attorney, I have to supervise the people in my office. . . First of all, I want to say, it hurts me. It hurts me emotionally to have to look in their faces. People who are rock solid people and strong public defenders, who are overwhelmed with so many cases, and when they look to me and say, "Jim, I've got a trial tomorrow. I haven't even spoken to this person. I've got to go to district court. I've got this and that." And, I literally feel helpless. . .

I'm not as young as I used to be. And I'm spread pretty thin and I try as much as I can. But it hurts me to see them, emotionally, under that much stress. It hurts me to know that I've seen people that I work with, (that have not only become friends and colleagues, but just like part of my family), to see their health deteriorate. I can tell you, I, myself, am on high blood pressure medicine. But there are other people, in particular, and one or two young people in my office that are on high blood pressure medicine that I don't think should be.

....

It makes my heart heavy to see people, good people, just about ground down. . . But, every day they go out there — sick, under stress — go to court and they do the best they can.

The second thing that worries me is our poor clients. I worry that, when we arraign these people in orange jumpsuits, all we have time to do is give them a card and say, "We'll get back with you." Because, in the afternoon we'll have 80 pretrial conferences and either setting cases for trial or settling cases. And, meanwhile, we have trials scheduled.

My third worry . . . is for our new attorneys. How are they addressed? How are they going to handle the sheer numbers of what we're doing? Today, I go back to circuit court and, when I'm done, I go to district court. I will have preliminary hearings, arraignments, and all sorts of things. How can a new, young attorney be thrown into that? How will they handle that? We have excellent training, but there isn't training that can help them to address that kind of thing.

We are people in our office that I want the whole state to be proud of. And, these numbers are hurting us — physically, emotionally and mentally.



Jim Cox



Cotha Hudson at the Somerset meeting

Jennifer Hall, Assistant Public Advocate, Richmond, Kentucky

The right to counsel promises many things: a knowledgeable hand to guide a defendant through the legal process, a zealous advocate in the court room, and the idea that justice and fair treatment are not for sale, available only to those defendants who can afford to buy legal expertise.

I work hard every day to live up to those promises. But everyday the number of clients I must represent grows larger and every day I fear that those promises are not being kept.

I have been a public defender for over 10 years. I represent clients in both district and circuit court. They face the full range of criminal charges, from public intoxication to murder.

There are so many clients that I cannot always be the guiding hand through the process that the right to counsel promises. Each Tuesday, I represent as many as 20 new clients in district court. Each Tuesday, I represent many clients that I have not had time to speak to before court. When I get to court, they clamor for time I do not have to give. They ask questions I do not have time to answer. They try to tell me details that I do not have time to hear. Private counsel, in court with one or two clients, has already answered the questions and heard the details. When the prosecutor makes plea offers, I stand before the rows of inmates from the jail and present them quickly in a take it or leave it fashion. The pace is rushed and hectic and clients must make decisions with little time to think about their options. Private counsel, with their one or two clients, can ask for time to speak with their defendants while the rest of the docket goes on. The “rest of the docket” is my docket. The judge cannot wait for me because I represent most all of the defendants on the docket. I am spread much too thin to provide careful guidance to every client. And careful guidance is what the right to counsel promises.

While I am a zealous advocate for my clients in the courtroom, I cannot advocate for things I do not have time to explore. When my client’s mother calls to tell me he was in special education classes in school, I am in court or too busy with some other case to take the call. When my client’s husband calls to tell me she was a wonderful mother before she got addicted to drugs, I don’t have time to pursue drug treatment options for her myself. There are so many drug addicted clients that if I took on the burden of arranging treatment, that would be all I do. When my client’s sister calls to tell me she believes he is mentally ill, I can promise an evaluation but I cannot check out hospitals or counseling myself. There are so many mentally ill clients that if I arranged treatment, I would do little else. Private counsel has proposed an alternative sentencing plan for her client. Private counsel has arranged for treatment. Private counsel may not be more zealous, but she has had more time to be prepared. I fear that my clients may serve jail time for offenses when private counsel’s clients may get the help they need. Zealously advocating for every possible option to incarceration is what the right to counsel promises.

So maybe justice is for sale. If not because a client can buy “expertise,” then maybe because a client can buy something more precious - counsel’s time. I fear the promises of the right to counsel are being lost somewhere in the stack of files on my desk that just keeps growing taller. For now, I will continue to fight to keep my promises every day. But every day I get a little more tired and a little more convinced that I am fighting a losing battle.

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